

AMENDED IN ASSEMBLY MAY 4, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 443**

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**Introduced by Assembly Member Alejo**

February 23, 2015

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An act to amend ~~Section~~ *Sections 186.2 and 186.4* of the Penal Code, relating to forfeiture.

### LEGISLATIVE COUNSEL'S DIGEST

AB 443, as amended, Alejo. Forfeiture.

Existing law subjects property acquired through or as proceeds of criminal profiteering activity to forfeiture. Existing law defines criminal profiteering activity as any specified acts or threats made for financial gain or advantage. Existing law requires a prosecuting agency to file a petition of forfeiture in conjunction with the criminal proceeding for the underlying offense.

This bill would allow the prosecuting agency to file a petition of forfeiture prior to the commencement of the underlying criminal proceeding if the value of the assets seized exceeds \$100,000, there is a substantial probability that the prosecuting agency will file a criminal complaint, there is a substantial probability the prosecuting agency will prevail on the issue of forfeiture and failure to enter the order will result in the property being destroyed or otherwise removed from the jurisdiction of the court, ~~and the need to preserve the property outweighs the hardship on any party against whom the order is entered.~~ *entered, and there is a substantial probability that the assets subject to forfeiture represent direct or indirect proceeds of criminal activity committed for*

*the benefit of, at the direction of, or in association with, a transnational criminal organization, as defined.* The bill would allow a person claiming an interest in the property or proceeds to move for return of the property on the grounds there is not probable cause to believe that the property is subject to forfeiture, and if the prosecuting agency does not establish ~~probable cause~~ *substantial probability* that the property is subject to forfeiture the court shall order the seized property returned.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 186.2 of the Penal Code is amended to  
2     read:  
3     186.2. For purposes of this chapter, the following definitions  
4     apply:  
5     (a) “Criminal profiteering activity” means any act committed  
6     or attempted or any threat made for financial gain or advantage,  
7     which act or threat may be charged as a crime under any of the  
8     following sections:  
9     (1) Arson, as defined in Section 451.  
10    (2) Bribery, as defined in Sections 67, 67.5, and 68.  
11    (3) Child pornography or exploitation, as defined in subdivision  
12    (b) of Section 311.2, or Section 311.3 or 311.4, which may be  
13    prosecuted as a felony.  
14    (4) Felonious assault, as defined in Section 245.  
15    (5) Embezzlement, as defined in Sections 424 and 503.  
16    (6) Extortion, as defined in Section 518.  
17    (7) Forgery, as defined in Section 470.  
18    (8) Gambling, as defined in Sections 337a to 337f, inclusive,  
19    and Section 337i, except the activities of a person who participates  
20    solely as an individual bettor.  
21    (9) Kidnapping, as defined in Section 207.  
22    (10) Mayhem, as defined in Section 203.  
23    (11) Murder, as defined in Section 187.  
24    (12) Pimping and pandering, as defined in Section 266.  
25    (13) Receiving stolen property, as defined in Section 496.  
26    (14) Robbery, as defined in Section 211.  
27    (15) Solicitation of crimes, as defined in Section 653f.

1 (16) Grand theft, as defined in Section 487 or subdivision (a)  
2 of Section 487a.

3 (17) Trafficking in controlled substances, as defined in Sections  
4 11351, 11352, and 11353 of the Health and Safety Code.

5 (18) Violation of the laws governing corporate securities, as  
6 defined in Section 25541 of the Corporations Code.

7 (19) Any of the offenses contained in Chapter 7.5 (commencing  
8 with Section 311) of Title 9, relating to obscene matter, or in  
9 Chapter 7.6 (commencing with Section 313) of Title 9, relating to  
10 harmful matter that may be prosecuted as a felony.

11 (20) Presentation of a false or fraudulent claim, as defined in  
12 Section 550.

13 (21) False or fraudulent activities, schemes, or artifices, as  
14 described in Section 14107 of the Welfare and Institutions Code.

15 (22) Money laundering, as defined in Section 186.10.

16 (23) Offenses relating to the counterfeit of a registered mark,  
17 as specified in Section 350.

18 (24) Offenses relating to the unauthorized access to computers,  
19 computer systems, and computer data, as specified in Section 502.

20 (25) Conspiracy to commit any of the crimes listed above, as  
21 defined in Section 182.

22 (26) Subdivision (a) of Section 186.22, or a felony subject to  
23 enhancement as specified in subdivision (b) of Section 186.22.

24 (27) Any offenses related to fraud or theft against the state's  
25 beverage container recycling program, including, but not limited  
26 to, those offenses specified in this subdivision and those criminal  
27 offenses specified in the California Beverage Container Recycling  
28 and Litter Reduction Act, commencing at Section 14500 of the  
29 Public Resources Code.

30 (28) Human trafficking, as defined in Section 236.1.

31 (29) Any crime in which the perpetrator induces, encourages,  
32 or persuades a person under 18 years of age to engage in a  
33 commercial sex act. For purposes of this paragraph, a commercial  
34 sex act means any sexual conduct on account of which anything  
35 of value is given or received by any person.

36 (30) Any crime in which the perpetrator, through force, fear,  
37 coercion, deceit, violence, duress, menace, or threat of unlawful  
38 injury to the victim or to another person, causes a person under 18  
39 years of age to engage in a commercial sex act. For purposes of  
40 this paragraph, a commercial sex act means any sexual conduct

1 on account of which anything of value is given or received by any  
2 person.

3 (31) Theft of personal identifying information, as defined in  
4 Section 530.5.

5 (32) Offenses involving the theft of a motor vehicle, as specified  
6 in Section 10851 of the Vehicle Code.

7 (33) Abduction or procurement by fraudulent inducement for  
8 prostitution, as defined in Section 266a.

9 (b) *“Organized crime” means crime that is of a conspiratorial*  
10 *nature and that is either of an organized nature and seeks to supply*  
11 *illegal goods and services such as narcotics, prostitution,*  
12 *loan-sharking, gambling, and pornography, or that, through*  
13 *planning and coordination of individual efforts, seeks to conduct*  
14 *the illegal activities of arson for profit, hijacking, insurance fraud,*  
15 *smuggling, operating vehicle theft rings, fraud against the beverage*  
16 *container recycling program, or systematically encumbering the*  
17 *assets of a business for the purpose of defrauding creditors.*  
18 *“Organized crime” also means crime committed by a criminal*  
19 *street gang, as defined in subdivision (f) of Section 186.22.*  
20 *“Organized crime” also means false or fraudulent activities,*  
21 *schemes, or artifices, as described in Section 14107 of the Welfare*  
22 *and Institutions Code, and the theft of personal identifying*  
23 *information, as defined in Section 530.5.*

24 ~~(b)~~

25 (c) (1) “Pattern of criminal profiteering activity” means  
26 engaging in at least two incidents of criminal profiteering, as  
27 defined by this chapter, that meet the following requirements:

28 (A) Have the same or a similar purpose, result, principals,  
29 victims, or methods of commission, or are otherwise interrelated  
30 by distinguishing characteristics.

31 (B) Are not isolated events.

32 (C) Were committed as a criminal activity of organized crime.

33 (2) Acts that would constitute a “pattern of criminal profiteering  
34 activity” may not be used by a prosecuting agency to seek the  
35 remedies provided by this chapter unless the underlying offense  
36 occurred after the effective date of this chapter and the prior act  
37 occurred within 10 years, excluding any period of imprisonment,  
38 of the commission of the underlying offense. A prior act may not  
39 be used by a prosecuting agency to seek remedies provided by this  
40 chapter if a prosecution for that act resulted in an acquittal.

1 (e)

2 (d) “Prosecuting agency” means the Attorney General or the  
3 district attorney of any county.

4 ~~(d) “Organized crime” means crime that is of a conspiratorial~~  
5 ~~nature and that is either of an organized nature and seeks to supply~~  
6 ~~illegal goods and services such as narcotics, prostitution,~~  
7 ~~loan-sharking, gambling, and pornography, or that, through~~  
8 ~~planning and coordination of individual efforts, seeks to conduct~~  
9 ~~the illegal activities of arson for profit, hijacking, insurance fraud,~~  
10 ~~smuggling, operating vehicle theft rings, fraud against the beverage~~  
11 ~~container recycling program, or systematically encumbering the~~  
12 ~~assets of a business for the purpose of defrauding creditors.~~  
13 ~~“Organized crime” also means crime committed by a criminal~~  
14 ~~street gang, as defined in subdivision (f) of Section 186.22.~~  
15 ~~“Organized crime” also means false or fraudulent activities,~~  
16 ~~schemes, or artifices, as described in Section 14107 of the Welfare~~  
17 ~~and Institutions Code, and the theft of personal identifying~~  
18 ~~information, as defined in Section 530.5.~~

19 (e) *“Transnational criminal organization” means an ongoing*  
20 *organization, group, or association having leaders, associates,*  
21 *operations, or activities in more than one country, with one of its*  
22 *primary activities being the commission of one or more of the*  
23 *criminal acts enumerated in paragraphs (1) to (25), inclusive, or*  
24 *(31) to (33), inclusive, of subdivision (e) of Section 186.22.*

25 (e)

26 (f) “Underlying offense” means an offense enumerated in  
27 subdivision (a) for which the defendant is being prosecuted.

28 **SECTION 1.**

29 *SEC. 2.* Section 186.4 of the Penal Code is amended to read:

30 186.4. (a) (1) The prosecuting agency shall, in conjunction  
31 with the criminal proceeding, file a petition of forfeiture with the  
32 superior court of the county in which the defendant has been  
33 charged with the underlying criminal offense, which shall allege  
34 that the defendant has engaged in a pattern of criminal profiteering  
35 activity, including the acts or threats chargeable as crimes and the  
36 property forfeitable pursuant to Section 186.3.

37 (2) The prosecuting agency may, prior to the commencement  
38 of a criminal proceeding, file a petition of forfeiture with the  
39 superior court of the county in which the defendant is being  
40 investigated, which shall allege that the defendant has engaged in

1 a pattern of criminal profiteering activity, including the acts or  
2 threats chargeable as crimes and the property forfeitable pursuant  
3 to Section 186.3, provided the court determines that:

4 (A) The value of the assets to be seized exceeds one hundred  
5 thousand dollars (\$100,000).

6 (B) There is a substantial probability that the prosecuting agency  
7 will file a criminal complaint or seek a grand jury indictment  
8 against the defendant.

9 (C) There is a substantial probability that the prosecuting agency  
10 will prevail on the issue of forfeiture and that failure to enter the  
11 order will result in the property being destroyed, removed from  
12 the jurisdiction of the court, or otherwise made unavailable for  
13 forfeiture.

14 (D) The need to preserve the availability of the property through  
15 the entry of the requested order outweighs the hardship on any  
16 party against whom the order is to be entered.

17 (E) *There is a substantial probability that the assets subject to*  
18 *forfeiture represent direct or indirect proceeds of criminal activity*  
19 *committed for the benefit of, at the direction of, or in association*  
20 *with, a transnational criminal organization, as defined in Section*  
21 *186.2.*

22 (b) The prosecuting agency shall make service of process of a  
23 notice regarding that petition upon every individual who may have  
24 a property interest in the alleged proceeds, which notice shall state  
25 that any interested party may file a verified claim with the superior  
26 court stating the amount of their claimed interest and an affirmation  
27 or denial of the prosecuting agency's allegation. If the notices  
28 cannot be given by registered mail or personal delivery, the notices  
29 shall be published for at least three successive weeks in a  
30 newspaper of general circulation in the county where the property  
31 is located. If the property alleged to be subject to forfeiture is real  
32 property, the prosecuting agency shall, at the time of filing the  
33 petition of forfeiture, record a lis pendens in each county in which  
34 the real property is situated which specifically identifies the real  
35 property alleged to be subject to forfeiture. The judgment of  
36 forfeiture shall not affect the interest in real property of any third  
37 party which was acquired prior to the recording of the lis pendens.

38 (c) (1) If a forfeiture petition is filed pursuant to paragraph (2)  
39 of subdivision (a), prior to the filing of the complaint in a criminal  
40 action, a person claiming an interest in the property or proceeds

1 may move for the return of the property on the grounds that there  
2 is not probable cause to believe the property is forfeitable pursuant  
3 to Section 186.3 and is not automatically subject to court order of  
4 forfeiture or destruction by another provision of this chapter. The  
5 motion may be made prior to, during, or subsequent to, the filing  
6 of criminal charges or a grand jury indictment. If the prosecuting  
7 agency does not establish ~~probable cause~~ *a substantial probability*  
8 that the property is subject to forfeiture, the court shall order the  
9 seized property released to the person it determines is entitled to  
10 the property.

11 (2) If a claimant's motion filed pursuant to paragraph (1) is  
12 granted, the people may, within 15 days, file a petition for a writ  
13 of mandate or prohibition seeking appellate review of the ruling.

14 (d) If a forfeiture petition is filed pursuant to paragraph (2) of  
15 subdivision (a), prior to the filing of the complaint in a criminal  
16 action, the motion and any injunctive order shall be dismissed if  
17 a criminal complaint or grand jury indictment is not filed within  
18 60 days of the grant of the motion. If a forfeiture petition is  
19 dismissed pursuant to this subdivision, the motion shall not be  
20 refiled, except upon the filing of a criminal complaint.

21 (e) All notices shall set forth the time within which a claim of  
22 interest in the property seized is required to be filed pursuant to  
23 Section 186.5.